

REMARKS

Claims 2-17, 19 and 21-42 remain in this application, of which Claims 4-12, 15, 17 and 21-32 have been withdrawn from examination as being directed to non-elected species. Claims 2, 19 and 33 have been amended to define still more clearly what Applicant regards as his invention, in terms that distinguish over the art. Of the claims under consideration, Claims 2, 13, 19 and 33 are independent.

Independent Claim 2, directed to an individual implant, now specifies that the implant is one of a list of types of such implants that are used in rhinoplasty. More particularly, Claim 2 now states explicitly that the implant is "a rhinoplastic augment having an augmenting surface shaped to impart a predetermined desirable shape to external tissue of the patient from a position at which the augment is implanted within the patient".

That is, the implant claimed in Claim 2 has a surface whose form the surgeon will use to give a desired shape to the patient's nose, and in fact the shape of the augment itself is what serves this purpose. Assuming that surface 211a of element 211 (see Fig. 7 of *Bolanos*) can be deemed to be a button, it is nonetheless believed to be clear that nothing in *Bolanos* either teaches or suggests an augment of any kind, and indeed, that patent does not pertain at all to rhinoplastic augments. Rather, the *Bolanos* implant is a fastener system intended to hold septal tissue immobile during healing after a septoplasty. Nothing has been found in that patent that would suggest using the shape of a surface of the fastener to impart its shape to the external tissue of the patient. Accordingly, it is believed that Claim 2 is clearly allowable over *Bolanos*.

Independent Claim 19, directed to a kit, has been amended by specifying that the elements in the kit include at least one strut, and at least one rhinoplastic augment selected from a list of types. Claim 19 now recites that at least one object in the kit is a rhinoplastic augment, and the language added to Claim 2 about the augment has been added to Claim 19 as well. Accordingly, Claim 19 is also believed to be clearly allowable over *Bolanos*.

Independent Claim 33, also directed to a kit, again specifies that the kit includes a strut and at least one augment from a list of known types of rhinoplastic augments. Again, the language added to Claim 2 has also been added to this claim. The claim differs from the other independent claims under consideration in not specifying that the connectors provided on the at least two elements are male and female ones that are attachable to each other by means of a snapping engagement, but merely are securable to each other without the use of screws. The claim also specifies that the two elements, as provided in the kit, are not in engagement with each other. (This, for one thing, distinguishes the claimed kit from a surgical implant in which the manufacturer has used a snap-fit to join two pieces of the device, as in *Tallarida*.) Accordingly, Claim 33 also is deemed allowable over the art cited against it.

Independent Claim 13 is directed to an individual strut. After careful study of the prior art, Applicant does not see what in *Bolanos* would meet the recitations “said female connector element comprising material *extending from said strut* and defining a receptacle, and said male connector element comprising material having a shape and size to be received snappingly in *said receptacle* [emphases added]”. Assuming that element 220 in Fig. 7 of that patent is deemed a strut, nothing in that patent suggests the quoted recitation; rather, the mere shape of aperture 221 defines the female connector. Since the recited material extending from a strut and defining a receptacle is not met by *Bolanos*, nothing in that patent could suggest a male element shaped and sized to fit snappingly in that receptacle. Accordingly, it is believed that Claim 13 is clearly allowable over *Bolanos*, even if it be assumed for argument’s sake that the addition of through-holes would have been obvious.

In fact, however, it is not seen how through-holes could be provided in an element of the thickness of element 220 in such manner as to make the element easier to bend, as is recited in Claim 13, nor is any other reason to add such holes seen to exist.

Accordingly, Applicant cannot agree that the proposed modification would have been obvious to one of merely ordinary skill.

On both grounds, therefore, Claim 13 is believed to be clearly allowable over *Bolanos*.

A review of the other art of record has failed to reveal anything which, in Applicant's opinion, would remedy the deficiencies of the art discussed above, as references against the independent claims under consideration herein. Those claims are therefore believed patentable over the art of record.

The other claims under rejection in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

Respectfully submitted,



Leonard P. Diana
Attorney for Applicant
Registration No. 29,296

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200